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CHARLES ELMO

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 402.

UNITED STATES OF AMERICA,
Petitioner,

vs.

GUARANTY TRUST COMPANY OF NEW YORK, *et al.*,
Respondents.

MOTION OF RESPONDENTS TO ADVANCE.

JOHN W. DAVIS,
EDWIN S. S. SUNDERLAND,
WARREN S. CARTER,
Counsel for Guaranty Trust Company of New York, Respondent.

JOSEPHUS C. TRIMBLE,
HENRY V. POOR,
FREDERICK G. INGERSOLL,
Counsel for Central Union Trust Company of New York, Respondent.

JOSEPH M. HARTFIELD,
JESSE E. WAID,
NORTON M. CROSS,
KENNETH TAYLOR,
Counsel for The New York Trust Company, Respondent.

JAMES H. McINTOSH,
CHARLES BUNN,
Counsel for Bankers Trust Company, Respondent.

M. M. JOYCE,
Counsel for W. H. Bremner, Receiver, Respondent.

EDWARD H. BLANC,
JAMES C. OTIS,
Counsel for The Farmers Loan and Trust Company, Respondent.

MORTIMER H. BOUTELLE,
Counsel for W. H. Kalbach and Clara Sheriff, as Executors of the Estate of H. H. Sheriff, Respondent.

DONALD EVANS,
Counsel for The Minneapolis & St. Louis Railroad Company, Respondent.

J. H. MULALLY,
Counsel for Great Northern Railway Company, Respondent.

OSCAR MITCHELL,
JAMES G. NYE,
Counsel for Duluth Boiler Works, Respondent.

Supreme Court of the United States,

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UNITED STATES OF AMERICA, Petitioner, vs. GUARANTY TRUST COMPANY OF NEW YORK, *et al.*, Respondents.	No. 402.

MOTION OF RESPONDENTS TO ADVANCE.

Come the respondents in the above entitled cause and move that this case be advanced for an early hearing and in support of their motion make the following brief statement of the matter involved and the reasons relied upon for the advancement.

The question involved in the above case is whether the United States is entitled under Section 3466 R. S. to priority in payment of debts due it over other creditors; namely, (1) mortgage trustees, (2) preferred creditors, and (3) general unsecured creditors, or any of them. Such question grows out of the receivership of the Minneapolis & St. Louis Railroad Company which owns 1,500 miles of lines situated in four States. The Receiver was appointed in the creditors' cause in July of 1923. Six of the seven mortgages of the System are now in foreclosure.

A decree of foreclosure and sale was entered nearly a year ago in January, 1929. In view of the fact that the receivership presented many complicated legal questions as to equipment and property liens, elaborate proofs were necessary.

Only through the cooperation of the courts below and the special efforts of counsel was it possible to have the appeals from the foreclosure decree argued before the Circuit Court of Appeals of the Eighth Circuit in June of this year. 4,500 claims and demands against the carrier were filed with the Master. All but eight or ten of these claims have been heard and a large number have been determined as entitled to a preference in payment. The Master's report as to prereceivership diversions was argued before the Circuit Court of Appeals in January, 1929. It is believed that final determination of the questions as to equipment and property liens, prereceivership diversions and the extent of the Government's priority will leave the way open for a reorganization of this property. A decision on the first two points is expected in the near future.

Until the approximate amount of cash necessary to pay claims found to be entitled to payment in priority to the mortgage debts is determined, it is impossible for the security holders or the Committees representing them to promulgate a reorganization plan.

The courts below and counsel representing many interests have since the entry of the decree of foreclosure and sale cooperated to the utmost in expediting the determination of the questions including the ones presented by this case in order that a sale of the property and the lifting of the receivership might not be further delayed. These efforts will have been made in vain unless this motion is granted. Such efforts have been made in the belief that the public interest required this receivership be ended as soon as it is practicable to do so. Respondents believe that it is not only in the public interest but in the interest of the many creditors and others affected by this case that this motion should be granted.

All of the respondents including the Receiver acting pursuant to the instructions of Circuit Judge Wilbur F. Booth, who has been in charge of the receivership since its inception, have joined in this motion.

WHEREFORE the respondents pray that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

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EDWIN S. S. SUNDERLAND,
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